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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/084,837	05/26/1998	HEINRICH D. LUTTICKEN	I/97269-US	6000

7590 03/20/2002

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PATENT DEPARTMENT
405 state street
MILLSBORO, DE 19966

EXAMINER

MOSHER, MARY

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 03/20/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

09/084,837

Applicant(s)

Lutticken et al

Examiner

Mosher

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on _____ is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 1.192.
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. Extensions of time may be obtained under 37 CFR 1.136(a).

3. ☒ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (b) ☒ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- (c) ☐ Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☐ other:

4. ☒ Because of the dismissal of the appeal, this application:

- (a) ☒ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration of the submission and prosecution has been reopened pursuant to 37 CFR 1.114.

Mary Mosher
MARY E. MOSHER
PRIMARY EXAMINER
GROUP 1800
1600

DETAILED ACTION

This application is in condition for allowance except for the following formal matters:

The specification does not adhere to the requirements of the sequence rules. Applicant must append SEQ ID Nos. to all mentions of specific sequences comprising four or more amino acids and ten or more nucleic acids in the specification. A specific example within the specification that does not comply with the sequence rules is found on page 15, Table 1. Applicant is required to append a SEQ ID NO. to any sequence within in the specification applicable to the rule. See 37 CFR § 1.821 (a)-(d) and MPEP § 2422.

Appropriate correction is required.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

The following is an examiner's statement of reasons for allowance:

Recently the CAFC has ruled that common knowledge and common sense are not sufficient motivation to select and combine two prior art references (In re Lee, 61 USPQ2d 1430, CAFC 2002). The examiner has not been able to find a specific reference which provides explicit motivation to choose the specific combination of elements recited in the claim, despite evidence of use of these elements to solve a common problem in analogous art. Since application of known elements to solve a

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known problem in a known manner relies upon the common knowledge and common sense of those in the art, and such knowledge and sense are no longer adequate to reach a conclusion of obviousness, the rejection is withdrawn.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shanon Foley whose telephone number is (703) 308-3983. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (703) 308-4027. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Mary Mosher